

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
LUCKENBACH GULF STEAMSHIP COMPANY, INC.)

Appearances:

For Appellant: Dorr, Stevenson & Cooper, Attorneys at Law

For Respondent: W. M. Walsh, Assistant Franchise Tax Commissioner, and James J. Arditto, Franchise Tax Counsel

O P I N I O N

This appeal is made pursuant to Section 20 of the Corporation Income Tax Act (Chapter 765, Statutes of 1937, as amended) from the action of the Franchise Tax Commissioner in denying the claims of Luckenbach Gulf Steamship Company, Inc., for refunds of tax in the amounts of \$766.17, \$2,458.00 and \$8,830.68 for the taxable years 1938, 1939, and 1940, respectively.

Appellant is a Delaware Corporation maintaining its principal office and place of business in New York City. During the years in question, all the business carried on by it consisted of the transportation of passengers and merchandise on vessels traveling in interstate commerce between ports in states on the Gulf of Mexico and on the Atlantic Coast and ports in California and the other Pacific Coast states. Appellant was not qualified to do business in California and transacted no business here except in connection with and as part of its interstate transportation activities. It did not rent or own any property in this State, other than the gross proceeds received from its interstate transportation operations. Appellant had no employees in California, its activities here in connection with those operations being conducted on its behalf by an agent, the Luckenbach Steamship Company, Inc.

The sole issue presented for decision on this appeal is whether Appellant can constitutionally be subjected to the imposition of the California corporation income tax upon the net income derived from sources in this State despite the fact that such income is wholly attributable to activities constituting interstate commerce. Appellant has not raised any issue with respect to the manner in which a portion of its net income was allocated to California sources.

In determining appeals from the action of the Franchise Tax Commissioner we have heretofore expressed great reluctance to consider the constitutionality of taxing provisions. See, e.g., Appeal of Vortex Manufacturing Company August 4, 1930; Appeal of American Insurance Agency, June 18, 1913. The constitutional

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questions raised by Appellant in this matter, however, have been fully resolved by the decision in West Publishing Co, v. McColgan 27 Cal. 2d 705, affirmed 326 U.S. ._____, 80 L. Ed. (Adv. Ops.) 1259, which upheld the validity of the corporation income tax as applied to a foreign corporation engaged **exclusively** in interstate commerce. The position of the Commissioner must, therefore, be sustained.

O R D E R

Pursuant to the views expressed in the opinion of the Board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to Section 20 of the Corporation Income Tax Act, that the action of Charles J. McColgan, Franchise Tax Commissioner, in denying the claims of Luckenbach Gulf Steamship Company, Inc., for refunds of tax in the amounts of \$766.17, \$2,458.00 and \$8,830.68 for the taxable years 1938, 1939 and 1940, respectively, be and the same is hereby sustained.

Done at Sacramento. California, this 17th day of April, 1947, by the State Board of Equalization.

Wm. G. Bonelli, Chairman
J. H. Quinn, Member
Jerrold L. Seawell, Member
Geo. R. Reilly, Member

ATTEST: Dixwell L. Pierce, Secretary